

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SANTANDER BANK, N.A., f/k/a SOVEREIGN
BANK, N.A., f/k/a SOVEREIGN BANK,

Plaintiff,

v.

AMADO OMAR YAÑEZ OSUNA a/k/a
AMADO YAÑEZ OSUNA a/k/a AMADO
YAÑEZ ASUNA a/k/a AMADO YAÑEZ,

Defendant.

ORDER

16 Civ. 1321 (ER)

RAMOS, D.J.

On February 22, 2016, Santander Bank, N.A. filed a complaint against Amado Omar Yañez Osuna alleging breach of a guaranty. Doc. 1. On March 11, 2016, Plaintiff amended the complaint for the second time. Doc. 6. A summons was issued on March 15, 2016, but Plaintiff has not filed an affidavit of service and the Defendant has not appeared. On October 8, 2020, the Court directed Plaintiff to file a status report by October 22 and warned that “[f]ailure to comply could result in the Court dismissing the case under Federal Rule of Civil Procedure 4(m).” Doc. 9. October 22 has now passed without Plaintiff’s response. For the reasons set forth below, the Court dismisses this case for failure to execute service under Federal Rule of Civil Procedure 4(m).

Rule 4(m) provides that “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—*must* dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m) (emphasis added).

Over four and a half years have passed since Plaintiff filed the amended complaint. Plaintiff has also failed to provide the Court with a status report, even when warned that failure to respond could result in dismissal under Rule 4(m). Accordingly, the Court dismisses Plaintiff's action without prejudice. The Clerk of Court is respectfully directed to terminate any pending motions and to close the case.

It is SO ORDERED.

Dated: October 23, 2020
New York, New York

A handwritten signature in blue ink, appearing to read 'Edgardo Ramos', is written above a horizontal line.

Edgardo Ramos, U.S.D.J.